

109TH CONGRESS
1ST SESSION

H. R. 1085

To amend title 23, United States Code, relating to design-build contracting.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2005

Mr. BURGESS introduced the following bill; which was referred to the
Committee on Transportation and Infrastructure

A BILL

To amend title 23, United States Code, relating to design-build contracting.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Reforming, Accel-
5 erating, and Protection Interstate Design Act”.

6 **SEC. 2. DESIGN-BUILD CONTRACTING.**

7 (a) IN GENERAL.—Section 112(b)(3) of title 23,
8 United States Code, is amended to read as follows:

9 “(3) DESIGN-BUILD CONTRACTING.—

10 “(A) IN GENERAL.—A State transpor-
11 tation department or local transportation agen-

1 cy may use design-build contracts for develop-
2 ment of projects under this chapter and may
3 award such contracts using any procurement
4 process permitted by applicable State and local
5 law.

6 “(B) LIMITATION ON WORK TO BE PER-
7 FORMED UNDER DESIGN-BUILD CONTRACTS.—
8 Construction of permanent improvements shall
9 not commence under a design-build contract be-
10 fore compliance with section 102 of the Na-
11 tional Environmental Policy Act of 1969 (42
12 U.S.C. 4332).

13 “(C) SCOPE OF WORK.—The scope of the
14 contractor’s work under a design-build contract
15 may include assistance in the environmental re-
16 view process for the project, including prepara-
17 tion of environmental impact assessments and
18 analyses, if such work is performed under the
19 direction of, and subject to oversight by, the
20 State transportation department or local trans-
21 portation agency and the State transportation
22 department or local transportation agency con-
23 ducts a review that assesses the objectivity of
24 the environmental assessment, environmental

1 analysis, or environmental impact statement
2 prior to its submission to the Secretary.

3 “(D) PROJECT APPROVAL.—A design-build
4 contract may be awarded under this paragraph
5 prior to compliance with section 102 of the Na-
6 tional Environmental Policy Act of 1969 only—

7 “(i) with the concurrence of the Sec-
8 retary in issuance of the procurement doc-
9 uments and any amendments thereto and
10 in award of the contract and any amend-
11 ments thereto; and

12 “(ii) if project approval will be pro-
13 vided after compliance with section 102 of
14 the National Environmental Policy Act of
15 1969.

16 “(E) EFFECT OF CONCURRENCE.—Con-
17 currence by the Secretary under subparagraph
18 (D) shall be considered a preliminary action
19 that does not affect the environment.

20 “(F) DESIGN-BUILD CONTRACT DE-
21 FINED.—In this section, the term “design-build
22 contract” means an agreement that provides for
23 design and construction of a project by a con-
24 tractor, regardless of whether the agreement is
25 in the form of a design-build contract, a fran-

1 chise agreement, or any other form of contract
2 approved by the Secretary.”.

3 (b) REGULATIONS.—Not later than 180 days after
4 the date of enactment of this Act, the Secretary shall issue
5 regulations that amend the regulations issued under sec-
6 tion 1307(c) of the Transportation Equity Act for the 21st
7 Century (23 U.S.C. 112 note). The amended regula-
8 tions—

9 (1) shall allow a State transportation depart-
10 ment or local transportation agency to use any pro-
11 curement process permitted by applicable State and
12 local law in awarding design-build contracts, includ-
13 ing allowing unsolicited proposals, negotiated pro-
14 curements, and multiple requests for final proposals;
15 except that the Secretary may require reasonable
16 justification to be provided for any sole source pro-
17 curement;

18 (2) may include “best practices” guidelines;

19 (3) shall not preclude State transportation de-
20 partments and local transportation agencies from al-
21 lowing proposers to include alternative technical con-
22 cepts in their “base” proposals;

23 (4) shall not preclude State transportation de-
24 partments and local transportation agencies from
25 issuing a request for proposals document, proceeding

1 with award of a design-build contract, or issuing a
2 notice to proceed with preliminary design work
3 under such a contract prior to compliance with sec-
4 tion 102 of the National Environmental Policy Act
5 of 1969 (42 U.S.C. 4332) if the design-build con-
6 tractor is not authorized to proceed with construc-
7 tion of permanent improvements prior to such com-
8 pliance; and

9 (5) shall provide guidelines regarding proce-
10 dures to be followed by the State transportation de-
11 partment or local transportation agency in their di-
12 rection of and oversight over any environmental im-
13 pact assessments or analyses for the project which
14 are to be prepared by the contractor or its affiliates.

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